UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ADA MORALES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
BRUCE CHADBOURNE, et al.,	:	No. 12-cv-00301-M-DLM
	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S COMBINED MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT WALL AND OPPOSITION TO DEFENDANT WALL'S SUMMARY JUDGMENT MOTION

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INTRODUCTION

Plaintiff Ada Morales is a U.S. citizen and long-time resident of Rhode Island. In 2009, the Rhode Island Department of Corrections ("RIDOC") imprisoned her for approximately 24 hours based solely on an immigration "detainer" asserting that an Immigration and Customs Enforcement ("ICE") agent had "initiated" an "[i]nvestigation" into her citizenship and immigration status. ICE did not support its request with a warrant or a judicial order authorizing detention. Although Ms. Morales told RIDOC officials repeatedly that she was a U.S. citizen, RIDOC nevertheless handcuffed her, strip searched her, and jailed her overnight with convicted inmates until ICE agents arrived the next day to take her into federal custody for interrogation.

Ms. Morales's detention was patently unconstitutional. And, as discovery has now shown, her experience was no anomaly. This was precisely how RIDOC's ICE detainer procedures were meant to work. It was standard practice for RIDOC officials to extend people's detention at ICE's request even if they identified themselves as U.S. citizens, and without giving them any opportunity to contest the legality of their detention. Indeed, RIDOC's own data show that, since RIDOC began collecting statistics in 2003, ICE has lodged *hundreds* of detainers against individuals identified in RIDOC's system as U.S. citizens. As Director of RIDOC, Defendant A.T. Wall knew that his subordinates treated ICE detainers as a basis for extended warrantless detention even when they were patently unsupported by probable cause and gave detainees no opportunity whatsoever to challenge their detention. Yet he made no effort to supervise or train his subordinates to bring their practices into compliance with the Constitution. Because he deliberately abdicated his duty as supervisor despite an obvious risk of unconstitutional detentions like Ms. Morales's, he, along with the ICE defendants, bears responsibility for Ms. Morales's imprisonment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. FACTS

1. Ms. Morales's Detention

Ada Morales was born in Guatemala and immigrated to the United States in 1985. Plaintiff's Statement of Undisputed Facts (hereinafter "Pl. Facts") ¶1. She became a Lawful Permanent Resident ("LPR") in 1989, and she became a naturalized U.S. citizen in 1995. *Id*. Ms. Morales has a Social Security Number and a U.S. passport. Pl. Facts ¶2.

On May 2, 2009, Rhode Island officials arrested Ms. Morales on state charges and transported her to the women's facility of RIDOC's Adult Correctional Institute. Pl. Facts ¶27. As part of the booking process, a RIDOC officer asked her questions and entered information into RIDOC's inmate database, "INFACTS." Pl. Facts ¶30. The booking officer asked Ms. Morales "where [she] was from"; she responded that she was born in Guatemala, and that that she is a U.S. citizen. Pl. Facts ¶32. RIDOC officials also had her Social Security card and driver's license in their possession. Pl. Facts ¶28. The booking officer recorded Ms. Morales's Guatemalan place of birth in INFACTS, but he left the "citizenship" field blank. Pl. Facts ¶34. The officer also recorded her date of birth, home address, Social Security Number, marital status, and husband's name in INFACTS. Pl. Facts ¶31.

In 2009, RIDOC had a long practice of collaborating with ICE. As Director Wall admitted, at booking, "all persons [we]re asked certain questions with respect to [their] national origin and . . . ICE would have access to this information from RIDOC's INFACTS computer system." Pl. Facts ¶39. RIDOC allowed ICE agents to log directly into INFACTS, and from there, ICE agents were able to download "daily commitment reports" containing information

about everyone committed to RIDOC's custody on a given day—including each person's name, inmate ID number, date of birth, gender, and Social Security Number. Pl. Facts ¶38.

On Monday morning, May 4, 2009, Defendant Edward Donaghy, an ICE agent in ICE's Rhode Island sub-office, reviewed RIDOC's daily commitment reports, which included Ms. Morales's name and approximately 100 others who had been committed to RIDOC custody over the weekend. Pl. Facts ¶¶45-47. At 8:32 a.m., Agent Donaghy checked a box on an immigration "detainer" form indicating that an "[i]nvestigation ha[d] been initiated" into Ms. Morales's immigration status, and he faxed the form to RIDOC. Pl. Facts ¶55. The detainer incorrectly identified Ms. Morales as an "alien" and alleged that her "[s]ex" was "M[ale]" and her "[n]ationality" was "Guatemala[n]." *Id*. The detainer requested that RIDOC "detain the alien" for up to 48 hours, plus weekends and holidays, after she would otherwise be released to give ICE extra time to take her into federal custody. *Id*. The detainer was not accompanied by a warrant or even an assertion of probable cause to believe Ms. Morales was a removable non-citizen. Pl. Facts ¶56.

Upon receiving Ms. Morales's detainer from ICE, a RIDOC officer recorded the detainer in INFACTS. Pl. Facts ¶129. No RIDOC official notified Ms. Morales that ICE had lodged a detainer against her. Pl. Facts ¶151.

Later on May 4, Ms. Morales was brought to state court for her initial appearance. She pleaded not guilty to the pending criminal charges, and the magistrate judge "withdr[e]w the warrant and release[d] [her] on $10,000 personal recogn[izance]." Pl. Facts ¶130.[1] Upon being

[1] Defendant mischaracterizes the record when he asserts that the magistrate judge "indicated to Morales that she would not be allowed to leave because of an immigration hold." Wall Br. at 6; *see also id.* at 32 (arguing that the magistrate "could have unrestrained Morales" but chose not to). As the arraignment transcript makes perfectly clear, while the magistrate could not *cancel* the ICE detainer, she *did* order Ms. Morales released. *See* Pl. Facts ¶130 ("Now, Ms. Morales, I am going to withdraw the warrant *and release you* on $10,000 personal recogn[izance].") (emphasis added). The magistrate further told Ms. Morales to "resolve that [ICE detainer] issue" and "report over to the Attorney General's Office . . . [for] fingerprinting," indicating her expectation that Ms.

ordered released, Ms. Morales should have been free to "walk right out the courthouse doors." Pl. Facts ¶132. But instead, pursuant to RIDOC's detainer policy, she was taken back to RIDOC in handcuffs, strip searched, and re-committed into prison custody. Pl. Facts ¶¶133, 134. This time, she was housed in a different part of the facility with sentenced inmates. Pl. Facts ¶136. The experience of being strip-searched was "very shameful" for Ms. Morales, Pl. Facts ¶135, and the additional night spent in prison on May 4 was "the worst night of [her] life." Pl. Facts ¶139. The sole basis for this additional night of detention was the existence of the ICE detainer. Pl. Facts ¶144.

Even though Ms. Morales told RIDOC officials at every opportunity that she is a U.S. citizen, she was kept in prison for approximately 24 more hours. Pl. Facts ¶142.[2] She was never given a copy of her detainer, and no RIDOC official took any action in response to her protests. Pl. Facts ¶151-153. One RIDOC official called her a liar and told her she would be deported. Pl. Facts ¶138. She was afraid that other inmates would hurt her, and she feared that, despite her citizenship, they were right when they told her she would be deported and separated from her husband and children. Pl. Facts ¶139.

On May 5, 2009, ICE agents arrived at the jail, handcuffed Ms. Morales, and transported her to ICE's Rhode Island sub-office. Pl. Facts ¶161. After questioning her and confirming that she is a U.S. citizen, they finally released her. Pl. Facts ¶162.

2. RIDOC's Detainer Practices and Director Wall's Role

Director Wall has been the Director of RIDOC since 2000. Pl. Facts ¶12. He testified that his responsibilities "include . . . approving all RIDOC policies" and "ensur[ing] that RIDOC

Morales was now at liberty. Pl. Facts ¶131. The magistrate clearly did not command RIDOC to take Ms. Morales into custody on the basis of the detainer, as Defendant's brief suggests.

[2] Ms. Morales testified that she was taken back to RIDOC around midday, and that she was picked up by ICE around 10:00 a.m. the following morning. Pl. Facts ¶142.

does not violate an inmate's constitutional rights." Pl. Facts ¶13. He also testified that his powers and duties "are defined by Rhode Island General Laws 42-56-10," Pl. Facts ¶14, which provides that "the director of the department of corrections shall," among other things:

> (3) Establish and enforce standards for all state correctional facilities; . . .
> (5) Manage, direct, and supervise the operations of the department; . . .
> (9) Determine the methods, means, and personnel by which those operations of the department are to be conducted; . . .
> (14) Establish training programs for employees of the department; [and] . . .
> (22) Make and promulgate necessary rules and regulations incident to the exercise of his or her powers and the performance of his or her duties, including, but not limited to, rules and regulations regarding . . . classification . . . and custody for all persons committed to correctional facilities.

R.I. Gen. Laws § 42-56-10. Director Wall agreed that he had the authority to change RIDOC's policies, practices, and procedures if he believed they violated an inmate's constitutional rights. Pl. Facts ¶15.

Since becoming Director in 2000, Director Wall was aware that ICE was issuing detainers to RIDOC. Pl. Facts ¶16. He was also aware that RIDOC maintained a policy of treating all ICE detainers as a sufficient basis for extending the detention of inmates otherwise entitled to release. Pl. Facts ¶145. There were no exceptions to this policy. Captain Kathleen Lyons, the Rule 30(b)(6) deponent designated as to RIDOC's policies and procedures, testified that "RIDOC had a policy to treat all immigration detainers [as] mandatory under all circumstances." Pl. Facts ¶144; *see also id.* ("RIDOC had a policy to use the issuance of a detainer as the sole basis for detaining an inmate who's [been] released at court on the original state charges"). This policy was memorialized in Standard Operating Procedure 2.08 ("SOP 2.08"), which described ICE detainers as "holds that prevent release of the inmate." Pl. Facts ¶149.

Any time ICE issued a detainer, Director Wall testified, RIDOC treated the subject's detention as "automatic," meaning that "[i]t was not RIDOC's policy to separately analyze . . . whether the detainer was proper." Pl. Facts ¶147. As Captain Lyons explained, even if "the person [wa]s claiming U.S. citizenship," RIDOC "would just defer to immigration" and hold the person anyway. Pl. Facts ¶154. This unquestioning deference to ICE detainers was unique. RIDOC's general policy required booking officers to "[r]eview[] the offender's committing papers (warrants, mittimus, judgment and conviction), to ensure lawfulness of commitment," but the record makes clear that RIDOC officers applied no such safeguards to ICE detainers. Pl. Facts ¶148.

Further, RIDOC gave detainees no opportunity to contest the lawfulness of their imprisonment on ICE detainers, even though such detainers could mean an extra five days in state prison. *See* 8 C.F.R. § 287.7(d) (2009) (requesting that the receiving agency "maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE]"); Pl. Facts ¶55 (same). As Captain Lyons testified, "there was no mechanism or process for the inmate to make a claim in any way that the detainer has been lodged in error[.]" Pl. Facts ¶154. Director Wall confirmed that he was not "aware of any practice or procedure that required staff to allow the inmate an opportunity to present evidence of citizenship" or "to transmit to ICE . . . a claim of U.S. citizenship." Pl. Facts ¶153. When asked whether he believed "it would be okay for RIDOC to do nothing if an inmate[] subject to an immigration detainer claimed to be a U.S. citizen," Director Wall answered in the affirmative, explaining that he "d[id] not think that is part of RIDOC's job." Pl. Facts ¶152.

RIDOC's policy of treating ICE detainers as an "automatic" basis for extended warrantless detention, combined with the complete absence of any procedural safeguards or opportunities for inmates to challenge the lawfulness of that detention, led predictably to unlawful detentions like Ms. Morales's. RIDOC received detainers from ICE on a "daily" basis. Pl. Facts. ¶143. Between 2003 and 2014, ICE lodged detainers against more than 5,000 people in RIDOC's custody. Pl. Facts ¶121. A shocking 462 of these detainers were issued against people who are identified in RIDOC's own records as U.S. citizens. Pl. Facts ¶122.

Despite Director Wall's statutory duties and the high volume of ICE detainers that RIDOC received and enforced on a daily basis, Director Wall never provided any training or supervision to his employees on how to deal with ICE detainers. Pl. Facts ¶¶146, 157. He offered no policy guidance, set no safeguards, and gave his subordinates no direction on what to do if a detainee claimed U.S. citizenship. *Id*. In fact, he stated during discovery that he only "recently became aware" of his agency's SOP 2.08, and he could not say whether he had even looked at the ICE detainer form or the federal detainer regulation until *after* this litigation had begun. Pl. Facts ¶150, 156. Despite knowing that his subordinates were treating ICE detainers as the basis for warrantless detention of people in his care, Director Wall acquiesced in RIDOC's practice and took no steps whatsoever to ensure that the detention was lawful. He explained that it "was longstanding practice and I didn't question it." Pl. Facts ¶146.

Ms. Morales's re-detention after the state court ordered her release was, in sum, a simple application of RIDOC's ICE detainer policy—a policy that Director Wall knowingly permitted to continue without any checks or safeguards. Pl. Facts ¶¶145, 146. Likewise, RIDOC's failure to afford her any meaningful opportunity to contest that imprisonment, despite her repeated protestations that she was a U.S. citizen, was entirely consistent with RIDOC's policy. Pl. Facts

¶¶152-55. Although Director Wall was aware of these practices and undisputedly had the authority and the responsibility to change them, he took no action—instead averting his eyes from the obvious constitutional problems with the detentions his subordinates were carrying out on a daily basis.

B. PROCEDURAL HISTORY

Ms. Morales filed her complaint against Director Wall and other defendants in 2012. Director Wall filed a motion to dismiss, which this Court denied in its entirety. *See Morales v. Chadbourne*, 996 F. Supp. 2d 19, 38-41 (D. R.I. 2014) (Dkt. No. 64). The Court held that Ms. Morales stated plausible claims for relief against Director Wall under the Fourth Amendment, the procedural aspect of the Due Process Clause, and Rhode Island tort law (false imprisonment and negligence). *Id.*

Regarding Ms. Morales's Fourth Amendment claim, the Court held that "RIDOC['s] detention based on the ICE detainer constitutes a 'new seizure' and must meet all of the Fourth Amendment requirements." *Id.* at 39. Based on the allegations, the Court held, there was no valid basis for Ms. Morales's detention: "[T]he information in the detainer itself should have led the RIDOC to believe that it was not facially valid or based on probable cause," as it "stated that Ms. Morales should be held based on an investigation that had been initiated, but detention for purposes of mere investigation is not permitted." *Id.*; *see also Dunaway v. New York*, 442 U.S. 200, 215-16 (1979). The Court rejected Director Wall's contention that RIDOC could rely on the detainer to imprison Ms. Morales just as it would rely on a judicially issued warrant. "Warrants are very different from detainers," the Court explained, and RIDOC could not justify its seizure based on "a facially invalid request to detain Ms. Morales pending an investigation of her immigration status." 996 F. Supp. 2d at 39.

Likewise, as to Ms. Morales's procedural due process claim, the Court rejected Director Wall's argument that RIDOC was required to honor ICE detainers, holding that "once Director Wall erroneously decided as a matter of policy that ICE detainers should be treated as mandatory grounds for imprisonment, it was incumbent on him to put due process protections in place to avoid erroneous deprivations of liberty." *Id*. at 40. Director Wall did not appeal the Court's ruling.

The federal defendants filed their own separate motions to dismiss, which this Court also denied in large part. *See id.* at 28-38. The individual federal defendants filed a partial interlocutory appeal, asserting qualified immunity. In 2015, the First Circuit Court of Appeals affirmed this Court's denial of their motions to dismiss. *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015). Most relevant for present purposes, the First Circuit adopted this Court's Fourth Amendment reasoning, holding that "[b]ecause Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification." *Id.* at 217. The First Circuit held it "beyond debate" in 2009 that "probable cause" was needed to justify detention for immigration purposes, and that mere "suspicion" was not constitutionally sufficient. *Id*. at 215-17.

Discovery is now complete, and all parties have moved for summary judgment.

ARGUMENT

Based on the undisputed facts adduced through discovery, Ms. Morales is entitled to summary judgment on her claims against Director Wall under the Fourth Amendment, Due Process Clause, and Rhode Island tort law. Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law." Fed. R. Civ. P. 56(a). Where multiple parties file cross-motions for summary judgment, as here, the Court must "determine whether either of the parties deserves judgment as a matter of law on [the] facts that are not disputed," and "[i]n so doing . . . consider each motion separately, drawing inferences against each movant in turn." *Showtime Entm't, LLC v. Town of Mendon*, 769 F.3d 61, 69-70 (1st Cir. 2014) (internal quotation marks omitted).

There are no material facts in dispute here. RIDOC detained Ms. Morales without a warrant, probable cause, or even the assertion of probable cause. RIDOC officials gave her no notice of the detainer and no opportunity to contest its legality. For the same reasons the Court has already articulated in its decision denying the motions to dismiss, Director Wall's failure to provide any training, supervision, or guidance to bring his subordinates' detainer practices into line with the Constitution demonstrates his deliberate indifference to the risk of unlawful detentions on his watch. Discovery has now borne out the complaint's allegations, and based on the undisputed facts in the record, Ms. Morales seeks summary judgment on all of her claims. In the alternative, if the Court determines that there are genuine disputes of material fact, it should deny Director Wall's summary judgment motion and set the matter for trial.

A. MS. MORALES IS ENTITLED TO SUMMARY JUDGMENT ON HER FOURTH AMENDMENT CLAIM AGAINST DIRECTOR WALL.

1. RIDOC Detained Ms. Morales in Violation of the Fourth Amendment.

There is no question that Ms. Morales was subjected to an unconstitutional detention from May 4 to 5, 2009. When she appeared in court on the morning of May 4, the state judge ordered her released on her own recognizance. Pl. Facts ¶130. At that moment, were it not for RIDOC's practice of treating ICE detainers as a basis for detention, it is undisputed that Ms. Morales could have "walk[ed] right out the courthouse doors." Pl. Facts ¶132. Instead, she was returned to RIDOC custody until the next day, when ICE took her into federal custody. Pl. Facts

¶¶133, 161. This Court has already held that "[b]ecause the state court released Ms. Morales on bail, the RIDOC detention based on the ICE detainer constitutes a 'new seizure' and must meet all of the Fourth Amendment requirements," including "probable cause." *Morales*, 996 F.Supp.2d at 39. The First Circuit agreed: "Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification." *Morales*, 793 F.3d at 217.[3]

Director Wall does not argue that the detainer provided RIDOC with probable cause to hold Ms. Morales. Nor could he. The detainer *on its face* asserts that it is based on nothing but ICE's "initiat[ion]" of an "[i]nvestigation," Pl. Facts ¶55, and it has long been settled that investigative interest does not authorize an arrest. *See Morales*, 793 F.3d at 215-16; *Dunaway*, 442 U.S. at 215-16; *Brown v. Illinois*, 422 U.S. 590, 605 (1975). As this Court held, "[o]ne needs to look no further than the detainer itself to determine that there was no probable cause to support its issuance. . . . [T]he information in the detainer itself should have led the RIDOC to believe that it was not facially valid or based on probable cause." *Morales*, 996 F.Supp.2d at 29, 39. Simply put, RIDOC had no lawful basis to hold Ms. Morales after the state judge ordered her released.

Instead, Director Wall makes the breathtaking claim that "it was constitutional to hold Morales for less than 24 hours *without* probable cause." Defendant Wall's Summary Judgment

[3] Both this Court and the First Circuit correctly analyzed RIDOC's detention of Ms. Morales as a warrantless arrest. *See Morales*, 793 F.3d at 216 (discussing detainer issuance as a "warrantless enforcement action[]"); *Morales*, 996 F.Supp.2d at 39 (noting that "[w]arrants are very different from detainers"). Unlike criminal warrants, ICE detainers are signed only by enforcement agents, and no judicial official ever reviews them. *See* 8 C.F.R. § 287.7(b) (listing enforcement officials who may issue detainers). *See also Buquer v. City of Indianapolis*, 2013 WL 1332158, at *3, *8 (S.D. Ind. Mar. 28, 2013) (describing arrests based on detainers as warrantless arrests); *El Badrawi v. DHS*, 579 F. Supp. 2d 249, 275-76 (D. Conn. 2008) (treating an arrest on an "immigration warrant" as a warrantless arrest because it was signed only by an ICE agent, and "[n]o neutral magistrate . . . ever examined the warrant's validity.").

Brief (Dkt. No. 167) (hereinafter "Wall Br.") at 32 (emphasis added); *see also id.* at 21, 28, 29-30. This is flatly wrong. The First Circuit has already held that Ms. Morales's imprisonment on the ICE detainer was the equivalent of a new "arrest" that must be supported by "probable cause" at the outset. *Morales*, 793 F.3d at 215-16. In so holding, it relied on longstanding case law concluding that much shorter periods of detention—measured in minutes, not hours—qualified as arrests for which probable cause was required. *See id.* at 216 (citing, *inter alia*, *United States v. Place*, 462 U.S. 696, 709-10 (1983) (emphasizing that the Supreme Court had "never approved a seizure of the person for the prolonged 90-minute period involved here" on less than probable cause)); *see also Dunaway*, 442 U.S. at 203 & n.2, 216 (petitioner, who was held at police headquarters for approximately "an hour" before making inculpatory statements, was subjected to an arrest that required probable cause); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975) (immigration officers may conduct "brief" vehicle stops based on reasonable suspicion, "but any further detention . . . must be based on . . . probable cause"); *id.* at 880 (noting that "a stop . . . 'usually consumes no more than a minute'"). Ms. Morales's detention lasted many times longer than a brief vehicle stop, and her detention was inarguably more intrusive. She was handcuffed and transported in a correctional van from court back to RIDOC, strip searched, re-committed into custody, and imprisoned overnight. There is no support for Director Wall's suggestion that investigatory detention in a prison cell is permitted for some *de minimis* period of time—and certainly not for 24 hours.[4]

The cases on which Director Wall relies offer him no support. *See* Wall Br. at 28 (citing, inter alia, *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991)). *McLaughlin*, along with its

[4] Indeed, in the traffic stop context, the Supreme Court recently rejected the government's argument that a "'seven- or eight-minute delay'" to allow for a dog sniff was an acceptable "de minimis intrusion on [the individual's] personal liberty," holding emphatically that officers may not even "'incrementally' prolong a stop to conduct a dog sniff" without "independent . . . reasonable suspicion." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614, 1616 (2015) (internal alteration omitted).

predecessor *Gerstein v. Pugh*, 420 U.S. 103 (1975), holds that when a person is arrested without a warrant, she must be "promptly" presented to a magistrate for a judicial probable cause determination—presumptively within 48 hours of the arrest. *McLaughlin*, 500 U.S. at 53. *McLaughlin* did *not* abrogate the separate and more basic Fourth Amendment rule that a warrantless arrest must always be supported by probable cause *at the outset*. *See Gerstein*, 420 U.S. at 113-14. The *McLaughlin* rule simply imposes an additional Fourth Amendment safeguard: Not only must the arresting agency have probable cause at the moment of arrest, but the arrestee must *also* be "brought before a neutral magistrate" to provide a prompt, independent check on the arresting agency's probable cause determination. *McLaughlin*, 500 U.S. at 53, 56. *See also Gerstein*, 420 U.S. at 113-14 ("a policeman's on-the-scene assessment of probable cause" is no substitute for "the detached judgment of a neutral magistrate").[5]

Nothing in *McLaughlin* or the other cases Wall cites[6] remotely suggests that a law enforcement agency has *carte blanche* to hold a person *without* probable cause so long as the agency either develops probable cause or releases the arrestee before 48 hours has passed. *See, e.g., United States v. Davis*, 174 F.3d 941, 946 (8th Cir. 1999) ("*[McLaughlin]* does not establish

[5] In fact, *McLaughlin* highlights an additional constitutional problem with Ms. Morales's detention. Even if the ICE detainer *had* provided probable cause for her detention at the outset, her detention would still have been unlawful because she was not being held pending a "*judicial* determination of probable cause" as the Fourth Amendment requires. *McLaughlin*, 500 U.S. at 47 (emphasis added). *McLaughlin* makes clear that even delays shorter than 48 hours will still be "unreasonabl[e]" if they are used for "the purpose of gathering additional evidence to justify the arrest" or simply "for delay's sake." *Id*. at 56. Ms. Morales's detainer requested her imprisonment for precisely such an impermissible purpose: because ICE had "initiated" an "[i]nvestigation" into her citizenship. Pl. Facts ¶55. *McLaughlin* specifically forbids such detention. *See McLaughlin*, 500 U.S. at 56; *see also Lopez v. City of Chicago*, 464 F.3d 711, 722 (7th Cir. 2006) ("*McLaughlin* held unequivocally that delays for purposes of gathering evidence are per se unreasonable."); *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 801 (N.D. Ill. 2014) (rejecting locality's *McLaughlin* argument in an ICE detainer case because "Villars was not awaiting a probable cause hearing. . . . But for the ICE detainer . . . [the locality] would have released Villars on his personal recognizance") (internal quotation marks and citation omitted).

[6] *United States v. Vilches–Navarrete*, 523 F.3d 1, 15 (1st Cir. 2008), is totally inapposite. *Vilches–Navarrete* held that a day-long delay before presentment to a magistrate was not unreasonable. *Id*. It did not suggest the arrest was without probable cause. *Id*. at 7. Likewise, *United States v. Ayala*, 289 F.3d 16, 19 (1st Cir. 2002), rejected a claim under the 48-hour rule, but did so without any suggestion that the arrests had been without probable cause in the first place. *Id*. In other words, the existence *vel non* of probable cause was not in question in either case; the only issue was whether the government complied with the *additional* requirement of a prompt presentment.

a per se rule that an individual may be detained for 48 hours by local authorities for any purpose whatsoever. Nor does it stand for the proposition that authorities may violate the Constitution as long as they do so for only a brief period of time."). In short, RIDOC's detention of Ms. Morales plainly violated the Fourth Amendment.

To be clear, Plaintiff's argument is *not* that RIDOC should have made its own determination of her citizenship and immigration status.[7] It is, rather, that RIDOC *should have released her on recognizance* as the state judge ordered. *See, e.g.*, *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1486 (9th Cir. 1993) (granting summary judgment against sheriff and jail commander where they "held [her] impermissibly after the judge directed her release on bail"); *see also Davis v. Hall*, 375 F.3d 703, 719-20 (8th Cir. 2004) (affirming denial of summary judgment to prison officials who continued to detain plaintiff after a judge ordered him released); *Douthit v. Jones*, 619 F.2d 527, 535 (5th Cir. 1980) (reversing judgment in favor of sheriff because he had a "duty . . . to incarcerate in the jail . . . only those individuals committed to his custody 'by lawful authority'"). Once the state judge ordered Ms. Morales released, RIDOC's lawful authority to detain her expired—and, in the absence of a new, constitutionally adequate basis for her further detention, RIDOC should have released her.

2. The Record Establishes that Director Wall Is Liable for Ms. Morales's Unlawful Detention Because of His Deliberately Indifferent Failure to Supervise or Train His Subordinates.

The record also makes clear that Director Wall's deliberate indifference was a proximate cause of Ms. Morales's unlawful detention. As the First Circuit held, it has long been the law of this Circuit that "[a] supervisor may be held liable for the constitutional violations committed by his subordinates" where there is "an affirmative link between the behavior of a subordinate and

[7] Such determinations generally fall outside the duties of state and local law enforcement officials. *See Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012) (explaining that "the determination whether a person is removable" is a federal responsibility, and often involves "significant complexities").

the action *or inaction* of his supervisor." *Morales*, 793 F.3d at 221 (internal quotation marks omitted; emphasis added). Among other things, a plaintiff may establish an affirmative link by showing that the supervisor "supervise[d] [or] train[ed]. . . a subordinate with deliberate indifference toward the possibility that deficient performance of the task eventually may contribute to a civil rights deprivation," or "engag[ed] in a custom[] that leads to the challenged occurrence." *Id*. at 222 n.5 (internal quotation marks omitted). The First Circuit applied these principles to Ms. Morales's allegations against the ICE supervisors and found them sufficient to state a claim for relief. *Id.* at 222.

The First Circuit's reasoning applies with equal force here. Discovery has now shown that Director Wall had been aware of RIDOC's ICE detainer practices since the year 2000, but he never provided his subordinates with training, supervision, or guidance to address the obvious risk of unlawful detentions like Ms. Morales's—even though he had both the power and the statutory responsibility to do so. Pl. Facts ¶¶13-15, 146. Nor did he give his staff any direction on what to do if a detainee claimed U.S. citizenship or if there were other red flags about the legality of the detention, as in Ms. Morales's case. Pl. Facts ¶157. Although RIDOC received ICE detainers on a "daily" basis, Pl. Facts ¶143, Director Wall could not say whether he ever bothered to look at the ICE detainer form or the federal detainer regulation until *after* this lawsuit began, and he only "recently became aware" of his own agency's SOP 2.08. Pl. Facts ¶150, 156.

These undisputed facts establish Director Wall's deliberate indifference to the entirely predictable harm that Ms. Morales suffered. This was not an unforeseeable, "'isolated instance[] of unconstitutional activity'" by a few rogue officials, as Wall suggests. Wall Br. at 11 (citing *Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 582 (1st Cir. 1994)). Rather, as Wall's own testimony confirms, his employees treated Ms. Morales exactly as RIDOC's detainer

procedures directed them to. Pl. Facts ¶149 (admitting that "SOP No. 2[.]08 was followed by the Records and ID Unit . . . at the time of Ms. Morales'[s] detention."); Pl. Facts ¶152 (answering, when asked if "it would be okay for RIDOC to do nothing if an inmate[] subject to an immigration detainer claimed to be a U.S. citizen," in the affirmative, and testifying that he "d[id] not think that is part of RIDOC's job."); Pl. Facts ¶154 (RIDOC would "defer to immigration" and hold an inmate because of a detainer even if the inmate asserted citizenship, and would not relay the citizenship claim to ICE even if a family member appeared at RIDOC with the inmate's passport in hand). That practice led directly and predictably to Ms. Morales's unlawful detention. Indeed, RIDOC subjected hundreds of people each year to these procedures. Between 2003 and 2014, RIDOC received 5,215 detainers from ICE. Pl. Facts ¶121. 462 of these detainers—an average of 42 per year—were issued against people identified in RIDOC's own records as U.S. citizens. Pl. Facts ¶122.

Director Wall protests that "RIDOC is simply the 'state prison,'" and as such, it "does not investigate the underlying grounds for any of the inmates detained at [its facility]." Wall Br. at 14 n.5. The record, however, shows otherwise. RIDOC's intake policy—which Wall signed—directs booking officers to "[r]eview[] the offender's committing papers (warrants, mittimus, judgment and conviction), to ensure lawfulness of commitment." Pl. Facts ¶148. In addition, Rhode Island law requires the "director of corrections" to maintain custody of prisoners only "until the prisoner shall be legally discharged," R.I. Gen. Laws § 11-25-17, and it makes clear that individuals "*shall* be released upon giving recognizance with sufficient surety." R.I. Gen. Laws § 12-13-1 (emphasis added). Thus, RIDOC officials have an unequivocal duty to ensure that they have a lawful basis to hold the people in their custody, and to release them when they are entitled to release on recognizance. Director Wall simply appears to have assumed, without

justification, that that duty did not apply to ICE detainers. *See Hallstrom*, 991 F.2d at 1486; *Davis*, 375 F.3d at 719-20; *Douthit*, 619 F.2d at 535.

Moreover, Director Wall and his subordinates were no passive actors here. RIDOC booking officers affirmatively inquired into arrestees' places of birth and passed that information along to ICE with the express understanding that ICE would use it to issue immigration detainers. Pl. Facts ¶¶38, 40. RIDOC gave ICE direct access to the INFACTS database. Pl. Facts ¶¶40, 37. RIDOC was actively involved in gathering information for ICE's benefit and facilitating the issuance of ICE detainers like Ms. Morales's.

Given these facts, it does not matter that Director Wall did not *personally* review SOP 2.08, or that RIDOC's practice "predated his appointment" as Director. Wall Br. at 7.[8] A supervisor's "direct participa[tion] in the rights-violating incident" is one way to establish liability under Section 1983, but it is not the only way. *Morales*, 793 F.3d at 221. As the First Circuit explained, a supervisor's "inaction" in the face of an obvious risk of constitutional violations is also sufficient. *Id.*; *see also Camilo-Robles*, 151 F.3d at 7 (an "affirmative connection need not take the form of knowing sanction, but may include tacit approval of, acquiescence in, or purposeful disregard of, rights-violating conduct").[9] Here, given the scope of

[8] Likewise, the technical distinction Director Wall seeks to draw between RIDOC's acknowledged "*practice* . . . to honor all immigration detainers" and the purported lack of a "written *policy*" is of no moment. Wall Br. at 7 (emphases added). First, of course, RIDOC *did* have a written policy: SOP 2.08. Pl. Facts ¶149. More importantly, though, it is well established that "[a] supervisor may . . . be held liable for 'formulating a policy, *or engaging in a custom*, that leads to the challenged occurrence.'" *Morales*, 793 F.3d at 31 n.5 (quoting *Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 582 (1st Cir. 1994)) (emphasis added). The distinctions Director Wall seeks to draw—"policies" versus "practices," "written" versus "unwritten," "formal" versus "informal"—are irrelevant, because even tacitly condoning an informal custom can be sufficient to establish his liability. *Camilo-Robles v. Hoyos*, 151 F.3d 1, 7 (1st Cir. 1998). And while Director Wall testified that it was not his general practice to review "SOPs" (as opposed to "policies"), Wall Br. at 13, he conceded that he did have the authority to change RIDOC's practices or procedures if he believed they violated an inmate's constitutional rights. Pl. Facts ¶15.

[9] Wall's brief relies on *Maldonado v. Fontanes*, 568 F.3d 263 (1st Cir. 2009), but misstates its holding. *See* Wall Br. at 11. The First Circuit actually held that the defendant mayor *could* be held liable for the municipality's policy of seizing plaintiffs' pets in violation of the Fourth Amendment. 568 F.3d at 271-72. The plaintiffs failed to state a substantive due process claim, however, because their "complaint identifies no policy which authorized the

RIDOC's complicity and the obviousness of the risk of unlawful detentions, Director Wall's "hands-off approach to his job does not absolve him of his responsibility for unconstitutional policies developed and promulgated by his underlings on his watch." *Ford v. City of Boston*, 154 F. Supp. 2d 131, 146-47 (D. Mass. 2001) (granting summary judgment against sheriff for his department's unlawful strip-search policy).

3. Director Wall Is Not Entitled to Qualified Immunity.

The same undisputed facts that demonstrate Director Wall's deliberate indifference, described above, also show why qualified immunity does not shield him from liability. His unthinking approval of his subordinates' ICE detainer implementation practices, despite the obvious risk of unconstitutional imprisonment, was not an objectively reasonable choice for the Director of RIDOC to make.

When considering a defendant's claim to qualified immunity, courts "proceed through a two-part analysis, considering whether (1) the facts alleged show the defendant's conduct violated a constitutional right, and (2) the contours *of this right* are 'clearly established' under then-existing law so that a reasonable officer would have known that his conduct was unlawful." *Morales*, 793 F.3d at 214 (internal quotation marks and brackets omitted; emphasis added). Director Wall cannot, of course, dispute that Ms. Morales's Fourth Amendment right not to be imprisoned without probable cause was clearly established in 2009; both this Court and the First Circuit have already held that it was. *See id.* at 211; *Morales*, 996 F. Supp. 2d at 33. Instead, Director Wall misdirects his qualified immunity argument toward a tangential issue: whether it was clearly established in 2009 that RIDOC could have declined to hold Ms. Morales on an ICE detainer. *See* Wall Br. at 18-26. His argument fails for two reasons.

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killing of the[ir] pets." *Id.* at 273 (emphasis added). In this case, of course, it is undisputed that RIDOC's policy was to extend people's detention based on ICE detainers.

First, the Court has already settled this question, holding that "detainers are not mandatory and the RIDOC *should not have reasonably concluded as such*." *Morales*, 996 F.Supp.2d at 40 (emphasis added). Director Wall's argument to the contrary cannot be squared with the Court's holding, or with the federal regulation's repeated description of ICE detainers as "request[s]." 8 C.F.R. §§ 287.7(a), (d). Indeed, as the Third Circuit held in *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014), not only does the plain language of the regulation show that detainers are requests, *see id.* at 640, but that is also the only constitutionally permissible interpretation—it "would violate the anti-commandeering doctrine of the Tenth Amendment" to read them as "command[s] to detain an individual on behalf of the federal government[]." *Id.* at 644 (citing *Printz v. United States*, 521 U.S. 898 (1997)). There was no reason for confusion on this score in 2009, as the anti-commandeering principle had already been established for more than a decade. *See Printz*, 521 U.S. at 935 (holding that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers . . . to administer or enforce a federal regulatory program").[10]

Director Wall points to no evidence in the record that would merit a departure from the Court's prior holding. Instead, the record further undermines his already weak claims regarding immunity. Director Wall argues in his motion that he reasonably relied on language in the detainer form,[11] but in his deposition, Director Wall could not say that he had even *looked* at the

[10] The handful of out-of-circuit district court cases on which Director Wall relies, *see* Wall Br. at 19-20, are unpersuasive. The district court decision in *Galarza v. Szalczyk*, No. 10-06815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012) (unpub.), was, of course, reversed in relevant part by the Third Circuit. *See Galarza*, 745 F.3d 634. The decision in *Rios-Quiroz v. Williamson County*, No. 11-1168, 2012 WL 3945354 (M.D. Tenn. Sept. 10, 2012) (unpub.), relied on the later-reversed district court decision in *Galarza*. And in both *Royer v. I.N.S.*, 730 F. Supp 588 (S.D.N.Y. 1990) and *Mulato-Gonzalez v. Sheriff*, 2007 WL 858759 (E.D. Tex. Mar. 15, 2007) (unpub.), the plaintiffs challenged their detention only insofar as it exceeded the detainer's 48-hour time limit; neither court had the opportunity to address whether the detainer was a request or an order.

[11] *See* Wall Br. at 13 (arguing that "[k]ey to [Wall's] determination [that detainers were mandatory] was his belief that an official document sent by a Federal law enforcement agency and that contained language that indicated RIDOC was 'required' to detain a person[] was Federal mandate to honor.").

detainer form or regulation until *after* Ms. Morales's lawsuit was filed. Pl. Facts ¶156. Thus, the language in the form or regulation are irrelevant to Wall's claim of qualified immunity. *See Beier v. City of Lewiston*, 354 F.3d 1058, 1071 (9th Cir. 2004) (holding that defendant officers were "not entitled to qualified immunity on the basis of a mistaken interpretation of the order, even a reasonable one, that they did not actually make").

Second, even if Director Wall *had* looked at the detainer form or regulation, and even assuming *arguendo* that he could reasonably have misunderstood it as mandatory, that is irrelevant to the question at hand. Regardless of whether the detainer was a request or an order, *no* reasonable official in 2009 could have believed that it was lawful to treat *all* detainers as a mandatory basis for detention, even if they were facially lacking in probable cause, like Ms. Morales's—and that is the core question for qualified immunity purposes. The federal government can neither order nor authorize state officials to imprison someone in violation of the Constitution. *See generally Saenz v. Roe*, 526 U.S. 489, 507 (1999) ("Congress may not authorize the States to violate the Fourteenth Amendment."); *Balelo v. Baldrige*, 724 F.2d 753, 765 (9th Cir. 1984) (en banc) ("Congress cannot authorize conduct which violates the [F]ourth [A]mendment."). Indeed, this Court has already held as much, explaining:

> [T]he information in the detainer itself should have led the RIDOC to believe that it was not facially valid or based on probable cause. The detainer stated that Ms. Morales should be held based on an investigation that had been initiated, but detention for purposes of mere investigation is not permitted . . . . As to Director Wall's argument that the RIDOC was *required* to detain Ms. Morales, the Court has already determined that the detention order *was not valid on its face*.

Morales, 996 F. Supp. 2d at 39 (emphases added). Thus, Director Wall's contention that ICE detainers were mandatory is not only incorrect as a matter of law; it is also irrelevant, given that Ms. Morales's particular detainer was a facially deficient basis for her imprisonment.[12]

Finally, in a last, convoluted bid for qualified immunity, Director Wall argues that because the First Circuit held it clearly established that detention on an ICE detainer without probable cause violated the Constitution, *see Morales*, 793 F.3d at 223, it would have been reasonable for him to assume in 2009 that all ICE detainers were, in fact, supported by probable cause. Wall Br. at 13, 24. That does not follow. The First Circuit's decision in this case concerned only what the Constitution required; it said nothing about whether ICE *in practice* was complying with the Constitution, or whether Director Wall could justifiably have assumed they were. *See Morales*, 793 F.3d at 218-220. In fact, the record here shows that ICE routinely flouted the Fourth Amendment's requirements when issuing detainers in 2009—and it did so quite openly, using a detainer form that advertised the lack of probable cause and requested detention solely for the impermissible purpose of "[i]nvestigation." Pl. Facts ¶¶55, 108, 122. Of course, the First Circuit's recent decision post-dates Ms. Morales's detention; Director Wall cannot claim to have relied on it to inform his understanding of the law in 2009.[13] And while

[12] After all, judicially issued warrants, too, are sometimes described in mandatory terms. *See, e.g.*, R.I. Gen. Laws § 12-6-7 (when a warrant is issued, "officers *shall* obey and execute the warrant . . . .") (emphasis added). But that does not mean that officers must (or may) execute a *facially invalid* warrant. It is well settled that officers can be liable for executing a warrant in the face of red flags that should give a reasonable officer pause. *See, e.g., Groh v. Ramirez*, 540 U.S. 551, 564-65 (2004) (denying qualified immunity to officers who executed a "facially deficient" search warrant; noting that "even a cursory reading of the warrant in this case . . . would have revealed a glaring deficiency") (internal quotation marks omitted"); *Peña-Borrero v. Estremeda*, 365 F.3d 7 (1st Cir. 2004) (officers could be held liable for executing an arrest warrant "where the officers had at hand proof that the warrant was deficient"). Given that officials can be liable for unreasonably executing a *warrant* that bears a court's imprimatur, certainly they can also be liable for executing a mere ICE detainer—which, as the Court has already noted, falls well short of a warrant. *See Morales*, 996 F. Supp. 2d at 39.

[13] For similar reasons, Director Wall cannot justify his actions by pointing to Agent Donaghy's deposition testimony that Donaghy "would only issue detainers if he had probable cause." Wall Br. at 29; *see also* Wall Br. at 5. Not only is Agent Donaghy's statement flatly at odds with the record, but it is also a post-hoc statement made in the context of litigation long after Ms. Morales's detention. Director Wall can point to no evidence that he spoke to Agent Donaghy before May 2009 or had any way of knowing Donaghy's subjective view about what evidence

Director Wall argues that "[t]his Court should be mindful . . . that the vast majority of state officers are not lawyers," Wall Br. at 17 (emphasis omitted), the fact remains that Wall himself *is* a lawyer, and he has decades of experience as a prison administrator. Pl. Facts ¶12. It is not unreasonable to expect him to know that warrantless detention for investigation is unconstitutional.

4. At a Minimum, Director Wall's Motion for Summary Judgment Should Be Denied.

Plaintiff believes the record unequivocally establishes Director Wall's liability, as argued above. At the very least, however, if the Court determines that there are any genuine disputes of material fact, it should still deny Director Wall's summary judgment motion, which relies on misstatements of the law and unsupported characterizations of facts in the record. Certainly a reasonable jury could conclude that Director Wall had both the power and the responsibility to oversee his subordinates' detainer practices and to ensure that they complied with the Fourth Amendment, and that his failure to do so was a proximate cause of Ms. Morales's detention. *See, e.g.*, *Dodds v. Richardson*, 614 F.3d 1185, 1189, 1203 (10th Cir. 2010) (affirming the denial of qualified immunity where the sheriff "admits to the existence . . . of the policies of not allowing felony arrestees to post lawfully set bail," and "[r]egardless of who first drafted the policies, Oklahoma law charged . . . [the] sheriff with the responsibilities of running the county jail"); *Rivas v. Freeman*, 940 F.2d 1491, 1495-96 (11th Cir. 1991) (affirming damages award against sheriff who "failed to establish . . . policies" that would prevent mistaken detention of individuals in custody). Even if the Court does not grant Plaintiff's summary judgment motion, then, it should nevertheless deny Director Wall's motion.

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supported his detainers. *See* Pl. Facts ¶58. As such, Agent Donaghy's testimony in 2015 is irrelevant to the reasonableness of Director Wall's actions in 2009.

B. MS. MORALES IS ENTITLED TO SUMMARY JUDGMENT ON HER DUE PROCESS CLAIM AGAINST DIRECTOR WALL.

The record establishes that Director Wall is responsible for the violation of Ms. Morales's procedural due process rights, as he was deliberately indifferent to RIDOC's failure to provide effective pre-deprivation process to inmates subject to ICE detainers.

In its decision on the motions to dismiss, the Court has already laid out the contours of Ms. Morales's entitlement to due process:

> "[T]he root requirement of the Due Process Clause [is] . . . that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). . . . Pre-deprivation process may be required when the deprivation of a detainee's liberty interests is not "unpredictable," *Zinermon v. Burch*, 494 U.S. 113, 136 (1990), and if the government is in a "position to provide for predeprivation process." *Id.* at 141.

Morales, 996 F. Supp. 2d at 40 (emphasis in original). The Court further concluded that Ms. Morales's allegations, if true, established Director Wall's liability for violating her due process rights: "[O]nce Director Wall erroneously decided as a matter of policy that ICE detainers should be treated as mandatory grounds for imprisonment, it was incumbent on him to put due process protections in place to avoid erroneous deprivations of liberty," yet he failed to do so. *Id.* at 40-41 (internal citations omitted). Discovery has now borne out these allegations, and summary judgment for Ms. Morales is appropriate.

1. RIDOC Gave Ms. Morales No Notice or Opportunity To Be Heard.

It is undisputed that RIDOC gave Ms. Morales no notice of her ICE detainer. Pl. Facts ¶151. She never received a copy, and she learned of the detainer's existence only when the state judge ordered her released from custody. *Id.* RIDOC also offered Ms. Morales no opportunity to contest the legality of her ICE detainer, either before or after it went into effect. Pl. Facts ¶154 (Captain Lyons testifying that "there was no mechanism or process for the inmate to make a

claim in any way that the detainer has been lodged in error"). Indeed, RIDOC would not so much as tell ICE about an inmate's assertion of U.S. citizenship, even if a family member showed up to the facility with the inmate's passport in hand. *Id.* Only *after* Ms. Morales had been detained at RIDOC for approximately 24 hours and transported to ICE's office for questioning did she have any opportunity to explain to "somebody that . . . care[d]" that she is a U.S. citizen. Pl. Facts ¶64. Throughout her detention in RIDOC's custody, Ms. Morales repeatedly told RIDOC officials that she was a U.S. citizen, but no one took any action to release her or convey her claim of citizenship to ICE. Pl. Facts ¶142, 154.

Ms. Morales's treatment was entirely "[]predictable" given RIDOC's policies. *Zinermon*, 494 U.S. at 136. As explained above, as long as an ICE detainer was in place, RIDOC would not allow an inmate to challenge their detention. Pl. Facts ¶154. Director Wall admitted that he was not "aware of any practice or procedure that required staff to allow the inmate an opportunity to present evidence of citizenship" or "to allow the inmate to transmit to ICE . . . a claim of U.S. citizenship." Pl. Facts ¶152. He admitted, moreover, that Ms. Morales "couldn't have issued a grievance to challenge the detainer" because ICE detainers were deemed "non-grievable" under the Inmate Handbook. Pl. Facts ¶155. Nor could she have written to Director Wall himself, because "it would violate the grievance procedure to bring a grievance directly to . . . the director." *Id*. Under RIDOC's practices, then, there was nothing for Ms. Morales to do but wait in detention until ICE decided to come get her.

Certainly, RIDOC was in a "position to provide" due process safeguards. *Zinermon*, 494 U.S. at 137. Ms. Morales was a prisoner in RIDOC's custody. RIDOC controlled her physical movement, her access to information (including the ICE detainer itself), her access to her own identification documents (including her driver's license and Social Security card), and her ability

to contact the outside world. *See* Pl. Facts ¶28; *Cooper v. Lockhart*, 489 F.2d 308, 313, 315 (8th Cir. 1973), *overruled on other grounds by Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976) (holding that "the cooperating custodial state denies the prisoner due process by continuing the effects of a [criminal] detainer placed on him solely on the strength of a request for one made by a sister state," because "[r]ealistically . . . it is the custodial state" that chose to take action based on the detainer). Nothing in the record suggests it would have been unduly burdensome for RIDOC to provide basic due process protections, like timely notice of the detainer and an opportunity to challenge its validity with ICE. *See Roberts v. Maine*, 48 F.3d 1287, 1294 (1st Cir. 1995) ("There is nothing in the record to indicate that allowing Roberts to call his lawyer from the police station would impose on the police any meaningful burden whatsoever.").

Importantly, due process in this context would not have required RIDOC to conduct a hearing into Ms. Morales' citizenship or removability. After all, state law enforcement officials are not equipped to make such determinations. *See Arizona*, 132 S. Ct. at 2506. But RIDOC did not even provide Ms. Morales with a copy of her detainer or give her an opportunity to contact ICE (for example, using the phone number on the detainer form). Nor did RIDOC convey her claims of U.S. citizenship to ICE before the detainer went into effect. These minimal steps would have spared Ms. Morales her detention. Alternatively, if RIDOC did not wish to provide even minimal process, the proper response would have been to release Ms. Morales as the state judge ordered. What is plainly impermissible, however, is what RIDOC did: summarily imprison Ms. Morales with no notice or opportunity to contest her detention whatsoever.

2. Director Wall Is Responsible for Failing to Ensure that RIDOC Provided Due Process Protections to the Subjects of ICE Detainers.

As Director and policymaker for RIDOC, Defendant Wall is responsible for this violation of Ms. Morales's due process rights. Having decided to permit his subordinates to treat ICE

detainers as the basis for warrantless detention, "it was incumbent on him to put due process protections in place to avoid erroneous deprivations of liberty." *Morales*, 996 F. Supp. 2d at 40. Yet, as described above, he made no effort to ensure that inmates had notice or a timely opportunity to contest erroneous detainers. *See supra* at Section B(1). As the record shows, there was no "mechanism or process" for an inmate subject to an erroneous ICE detainer to contest the lawfulness of her detention while she was in RIDOC custody. Pl. Facts ¶154. Even as of his deposition, Director Wall indicated that he believed "it would be okay for RIDOC to do nothing if an inmate[] subject to an immigration detainer claimed to be a U.S. citizen," explaining that he "d[id] not think that is part of RIDOC's job." Pl. Facts ¶152.

Ms. Morales's detention was entirely foreseeable given the policies and lack of policies for which Director Wall was responsible. Ms. Morales's experience was not anomalous or the result of one official's "random and unauthorized error." *Zinermon*, 494 U.S. at 135. Rather, it was the wholly predictable result of Director Wall's failure to put any procedural protections in place to prevent erroneous detention on ICE detainers. In sum, Director Wall was deliberately indifferent to the obvious risk of due process violations, and his inaction led directly to Ms. Morales's detention without due process.

3. Director Wall Is Not Entitled to Qualified Immunity.

Director Wall is not entitled to qualified immunity for a simple reason: He cannot claim it was reasonable to deny the subjects of ICE detainers any notice or opportunity to contest their detention. Indeed, his failure to put any procedural safeguards in place effectively guaranteed that erroneous deprivations of liberty would occur. Even if it was not clearly established in 2009 precisely what *sorts* of safeguards were required in this context, it is inarguable that the Due Process Clause did not permit RIDOC to lock people up without giving them *any* notice or

opportunity to contest the detainer whatsoever. *See Clukey v. Town of Camden*, 717 F.3d 52, 60 (1st Cir. 2013) (allegation that Town "failed to provide [plaintiff] with *any notice of any kind whatsoever* . . . is fatal to the Town's argument").[14]

In fact, with respect to *criminal* detainers, state law required RIDOC to "promptly inform [the individual] of the source and contents of any detainer . . . [and] of his or her right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based." R.I. Gen. Laws § 13-13-2, Art. III(c); *see also id.* § 13-13-8. Given that RIDOC was already required by law to provide due process protections to the subjects of criminal detainers, there is nothing unfair about expecting a reasonable official to understand that he must also provide some notice and an opportunity to be heard before depriving someone of her liberty on an ICE detainer, especially when ICE detainers, on their face, indicated that they were issued on far flimsier grounds than criminal detainers. As a matter of law, Director Wall is not entitled to qualified immunity.

4. At a Minimum, Director Wall's Summary Judgment Motion Should Be Denied.

Plaintiff believes the record establishes Director Wall's liability, as argued above. If the Court determines that there are any genuine disputes of material fact, however, it should still deny Director Wall's summary judgment motion, because a reasonable jury could easily conclude that he is liable for violating her due process rights.

[14] Director Wall's reliance on *Devenpeck v. Alford*, 543 U.S. 146, 155 (2004), is misplaced. *Devenpeck* was a Fourth Amendment case; it contains no discussion of procedural due process, and certainly does not stand for the proposition that Ms. Morales "was not constitutionally entitled to notice and an opportunity to be heard on a one-day detention order" as Wall contends. Wall Br. at 26.

C. MS. MORALES IS ENTITLED TO SUMMARY JUDGMENT ON HER STATE-LAW TORT CLAIMS.

The undisputed facts establish that Director Wall is liable for the torts of false imprisonment and negligence, and Ms. Morales is entitled to summary judgment on both claims. At a minimum, Director Wall's motion for summary judgment should be denied.[15]

1. Ms. Morales Is Entitled to Summary Judgment on Her False Imprisonment Claim.

Under Rhode Island tort law, "[w]henever a person unlawfully obstructs or deprives another of his freedom to choose his location, for however brief a period, that person will be liable for that interference." *Moody v. McElroy*, 513 A.2d 5, 7 (R.I. 1986) (internal citations omitted). The elements of false imprisonment are: "(1) the defendant intended to confine [the plaintiff], (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement, and (4) the confinement was not otherwise privileged." *Id.* at 7 (citing Restatement (Second) Torts § 35). The plaintiff must also show (5) that "she was detained without legal justification or under a void process." *Id*. (internal citations omitted). Based on the undisputed facts in the record, Ms. Morales has established each one of these elements.

First, there is no dispute that Director Wall was subjectively aware of RIDOC's practice of treating all ICE detainers as a basis for warrantless detention, and that he knew he had the authority to change that practice. Pl. Facts ¶¶13-15, 144-47. There is also no dispute that Director Wall chose not to exercise his authority to change RIDOC's practice. Pl. Facts ¶146. Therefore, as a matter of law, he "intended to confine" all the subjects of ICE detainers in his

[15] Plaintiff is concurrently filing under separate cover an opposition to Director Wall's Motion for Certification and Substitution (Dkt. No. 170). She contends that the State of Rhode Island should not be substituted in Director Wall's place as defendant as to the tort claims because the substitution motion is inadequately supported and because the record establishes that Director Wall's inexcusable carelessness amounted to willful misconduct foreclosing substitution. *See* R.I. Gen. Laws § 9-31-12(b). Plaintiff incorporates her opposition to the substitution motion herein.

custody, including Ms. Morales. *Moody*, 513 A.2d at 7. *See also id.* (incorporating the definition of false imprisonment from the Second Restatement into Rhode Island Law); Restatement (Second) of Torts § 35, comment (d) (1965) ("The actor is liable under this Section if his act was done for the purpose of imposing confinement upon the other *or with knowledge that such confinement would, to a substantial certainty, result from it*.") (emphasis added).

The fact that Director Wall did not single out Ms. Morales *personally* for detention does not absolve him of liability. *See* Restatement (Second) of Torts § 43 ("If an act done with the intention of affecting a third person imposes a confinement upon another, the actor is subject to liability to such other as fully as though it were intended so to affect him."). For example, the Restatement instructs that a shopkeeper is liable for false imprisonment when, "knowing that . . . a customer[] is in his shop, [he] locks its only door in order to prevent a third person from entering." Restatement (Second) of Torts § 35, comment (d). Here, Director Wall effectively locked the prison doors to everyone for whom RIDOC received an ICE detainer. Even though he did not have Ms. Morales in particular in mind, it was substantially certain that she, like the customer in the Restatement's example, would be confined as a result of his conduct.

Second and third, Ms. Morales was indisputably "conscious of [her] confinement" and "did not consent" to it. *Moody*, 513 A.2d at 7. She remembers the night that she spent in RIDOC's custody after she should have been released as "the worst night of [her] life." Pl. Facts ¶139. She protested repeatedly to multiple RIDOC officials that she was a U.S. citizen and that the ICE detainer was erroneous, but she was nevertheless imprisoned until the following day against her will. Pl. Facts ¶¶137, 142.

Fourth and fifth, Ms. Morales's detention was clearly not "privileged" and was "without legal justification," *Moody*, 513 A.2d at 7, for all the reasons discussed above. *See supra* at

Section A(1). Although a facially valid, judicially issued arrest warrant will generally protect the officer executing it from liability for false imprisonment, *see Moody*, 513 A.2d at 8, this Court has already recognized that "[w]arrants are very different from detainers and there was no accompanying warrant in this case." *Morales*, 996 F. Supp. 2d at 39. "Moreover, the information in the detainer itself should have led the RIDOC to believe that it was not facially valid or based on probable cause," as "detention for purposes of mere investigation is not permitted." *Id*. Because Ms. Morales's ICE detainer was not a valid arrest warrant and did not purport to be based on probable cause of any violation, it does not render Ms. Morales's detention legally justified. *See Moody*, 513 A.2d at 8 (holding that even when an officer receives a document purporting to be a lawful warrant, that does not automatically immunize him from liability for false imprisonment; "[i]t is incumbent upon the officers . . . to know the superficial requirements of a valid warrant, and liability will be imposed if it," for example, "does not charge a crime.").

In the event the Court does not agree that Ms. Morales is entitled to summary judgment on this claim, it should nonetheless deny summary judgment to Director Wall. Wall's arguments for summary judgment on the false imprisonment claim are duplicative of his Fourth Amendment arguments, and the Court should reject them for the reasons described above. *See supra* at Section A(1).

2. Ms. Morales Is Entitled to Summary Judgment on Her Negligence Claim.

Ms. Morales is also entitled to summary judgment against Director Wall on her negligence claim. Under Rhode Island law, "[t]o maintain a cause of action for negligence, the plaintiff must establish four elements: (1) a legally cognizable duty owed by defendant to plaintiff; (2) breach of that duty; (3) that the conduct proximately caused the injury; and (4)

actual loss or damage." *Medeiros v. Sitrin*, 984 A.2d 620, 625 (R.I. 2009) (internal citation omitted). Discovery has now established each of these elements.

First, Director Wall had a duty—one that arose under clearly established Fourth Amendment law and Rhode Island statutory law—not to detain Ms. Morales without a lawful basis. *See* Pl. Facts ¶¶13-15 (Wall testified that his responsibilities include "ensur[ing] that RIDOC does not violate an inmate's constitutional rights"); R.I. Gen. Laws § 42-56-10 (enumerating the duties of the director). Director Wall also had an unequivocal duty under state law to release Ms. Morales once the state judge ordered her released on recognizance. *See* R.I. Gen. Laws §§ 11-25-17, 12-13-1.[16]

Second, Director Wall breached his duty of care by taking no steps to correct RIDOC's policy of categorically treating all ICE detainers as an automatic basis for warrantless detention, and by taking no steps to establish any meaningful mechanism for detainees to contest their imprisonment. For all the reasons explained above, *see supra* at Sections A(2) and B(2), he failed to exercise due care.

Third, Director Wall's breach proximately caused Ms. Morales's unlawful detention.[17] If not for RIDOC's detainer policy—which Director Wall had the power and the obligation to

[16] The existence of a duty is "a question of law," which Rhode Island courts assess based on "all relevant factors, including the relationship of the parties, the scope and burden of the obligation to be imposed upon the defendant, public policy considerations, and notions of fairness." *Volpe v. Gallagher*, 821 A.2d 699, 705 (R.I. 2003) (internal citations omitted). A violation of a statute or agency regulation may be evidence that a duty has been breached. *See, e.g., Fed. Exp. Corp. v. State of R.I., Dep't of Transp., Airports Div*., 664 F.2d 830, 835 (1st Cir. 1981) ("The standards of conduct to which the defendants are held in the present case are defined largely by operations manuals promulgated by the government.") (applying Rhode Island law); *Gail v. New England Gas* Co., 460 F. Supp. 2d 314, 321 (D.R.I. 2006) ("under Rhode Island law, violation of a statute is evidence of negligence.") (internal citations omitted).

[17] Of course, Director Wall's actions and omissions were not the *sole* proximate cause; as Ms. Morales argues in her separate brief regarding the federal defendants, the acts and omissions of ICE officials also proximately caused her injuries. It is well established that multiple tortfeasors may be held responsible where their various actions contribute to causing a single injury. As the Rhode Island Supreme Court has explained, "proximate cause 'need not be the sole and only cause. It need not be the last or latter cause. It's a proximate cause if it concurs and unites with some other cause which, acting at the same time, produces the injury of which complaint is made.'" *Pierce v. Providence Ret. Bd.*, 15 A.3d 957, 966 (R.I. 2011) (internal citation omitted).

change—Ms. Morales would have walked out the courthouse doors on May 4. Pl. Facts ¶¶13-15, 144-47. Likewise, if Director Wall had made any meaningful due process mechanisms available, Ms. Morales could have easily demonstrated her U.S. citizenship and avoided a night in prison. It was entirely foreseeable that RIDOC's policies and practices would lead to the unlawful detention of individuals like Ms. Morales. *See Calhoun v. City of Providence*, 390 A.2d 350, 357 (R.I. 1978) (holding that "the evidence introduced by plaintiff clearly established a prima facie case of negligence" because a jury could conclude that a county clerk's "bookkeeping slip-up" resulted in the plaintiff's arrest pursuant to an already-executed warrant).

Fourth and finally, it is undisputed that Ms. Morales suffered actual injury in the form of emotional distress and economic loss. Because of Director Wall's negligence, she spent "the worst night of [her] life" in a prison cell. Pl. Facts ¶139. She was subjected to a humiliating strip search. Other inmates harassed her, and at least one RIDOC officer called her a liar and told her she would be deported. Pl. Facts ¶¶138, 139. She spent the night fearing that she would, indeed, be separated from her children and husband. Pl. Facts ¶139. Director Wall himself recognized that "[a] night in jail can be traumatic," and that an inmate could suffer "abuse from other inmates" and "could worry about the care of their children" while incarcerated. Pl. Facts ¶140. Ms. Morales also missed work and lost wages as a result of her extended detention. Pl. Facts ¶141.

In sum, Director Wall had a duty not to subject the inmates in his care to unconstitutional and baseless imprisonment without any meaningful opportunity to contest their detention. He breached that duty, and Ms. Morales suffered as a result. Ms. Morales is therefore entitled to summary judgment on her negligence claim. At a minimum, if the Court determines that there

are any genuine questions of material fact, it should deny Director Wall's motion for summary judgment.

CONCLUSION

For the foregoing reasons, the Court should grant summary judgment to Ms. Morales, or in the alternative, deny Director Wall's motion for summary judgment and permit the matter to proceed to trial.

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Respectfully submitted,

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